IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 28983 of 2007(A)

CMA.63/2006 of DISTRICT COURT, PALAKKAD
OS.182/2006 of PRL.MUNSIFF COURT, PALAKKAD
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PETITIONER:

K.G.KURUVILLA, S/O. LATE K.M.GEORGE,
KAYYALAKKAKAM, KURAVANKONAM JUNCTION,
THIRUVANANTHAPURAM-03, POWER OF ATTORNEY HOLDER
OF G.P.NAIR FAMILY TRUST.

BY ADV. SRI.C.E.UNNIKRISHNAN

RESPONDENTS:
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1. FOREST RANGE OFFICER,
WALAYAR, PALAKKAD.

2. THE DIVISIONAL FOREST OFFICER,
PALAKKAD.

3. KALLEKULANGARA EMOOR BHAGAVATHY
DEVASWOM, REP. BY EXECUTIVE OFFICER.

4. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, PALAKKAD.

R1, R2 & R4 BY SPL. GOVERNMENT PLEADER(FORESTS)
SRI. M.P. PRAKASH.
R3 BY ADV. V. CHITHAMBARESH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 28983 OF 2007

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Dated this the 1st day of October, 2007.

J U D G M E N T

This writ petition is preferred against the order of the District Judge, Palakkad in CMA 63/06. The learned District Judge by a considered order dismissed the CMA. The trial court also on a consideration of the facts available found that the plaintiff is not entitled to the injunction. Now, it is those findings which are attempted to be assailed in this writ petition. This Court functioning under Article 227 of the Constitution of India cannot go into the deeper question of who is in actual possession of the property. But its power or duty is to find out whether there is any illegality or perversity in the approach made by the Court below and whether it requires correction under the supervisory jurisdiction of this Court.

2. I am conscious of the fact that while disposing of a batch of appeals under the Kerala Private Forests (Vesting and Assignment) Act, 1971, this Court declared that an

extent of 67.56 hectares of land described as Zone 1 in Ext.A211 submitted by the Asst. Commissioner for Agricultural Income tax and Sales Tax, was not a private forest as on 10.5.1971 or in other words Government cannot claim any right over the said property. So far as the title, entitlement, possession etc. with respect to this property, the parties will be governed by the decision of the civil Court as litigations are pending between them before various courts with respect to the same. So, what is declared by this Court is regarding the question of 67.56 hectares of land to the effect that they are not vested in the Government. At the same time this Court found that there are innumerable litigations between the parties claiming rival possession. The learned District Judge found that the petitioner has only impleaded the Government and the Emoor Bhagavahy Devaswom. The Court also found that admittedly there are several other claimants and the suits filed by them are pending. So the issues between the parties will have to be settled while adjudicating the suits in between them. Order

of temporary injunction can be granted only if prima facie the petitioner proves that he is in possession of the plaint B schedule property as claimed for which there is no acceptable prima facie evidence. In order to cloth a party with an order of injunction, the minimum requirement is the case of prima facie possession, balance of convenience and irreparable injury. When the finding of the Court that there is no prima facie possession and that too in a petition without the junction of other parties, when they are really necessary for adjudicating the question, I do not find that the Court below has committed any error of jurisdiction, illegality or perversity in arriving at the decision. Therefore, the writ petition lacks merit and it is dismissed.

The trial court shall see that if there is time and if there is no legal impediment, the suit be disposed of as expeditiously as possible along with the connected cases.

M.N. KRISHNAN, JUDGE.

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